

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**Court Minutes**

**March 23, 2009**

**MISC. ORDER 2009-004**

BY THE COURT:

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 10.1004, 10.1012, and 10.1016, during the absence of the Presiding Justice from the court on March 26 and March 27, 2009, or until his return. (See Cal. Const., art. VI, §3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

SCOTLAND, P.J.

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Nicholson, Associate Justice; Butz, Associate Justice; Cantil-Sakauye, Associate Justice; and Haskett, bailiff.

**C057989      MCCAIN et al. v. HAN**

Cause called. William V. Campisi, Jr. argued for appellant. Yvonne M. Pierrou argued for respondent. Cause submitted. Cause submitted.

At 10:12 a.m., the court recessed. At 10:15 a.m., the court reconvened with Raye, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C055282      THE PEOPLE v. FREDDY SIORDIA**

Cause called. Manuel J. Baglanis, court appointed counsel, argued for appellant. Daniel B. Bernstein, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:42 a.m., the court recessed. At 2:01 p.m., the court reconvened with Scotland, Presiding Justice; Blease, Associate Justice; and Robie, Associate Justice.

**C054919      TESELLE v. MCLOUGHLIN**

Cause called. Thomas H. Keeling, J.D., PH.D. argued for and Franklin J. Brummett appeared only for appellant. Matthew J. Weber argued for respondent. Cause submitted.

At 2:33 p.m., the court recessed. At 2:35 p.m., the court reconvened with Scotland Presiding Justice; Raye, Associate Justice; and Cantil-Sakauye, Associate Justice.

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### March 23, 2009, Continued

Cause called. Christopher Blake, court appointed counsel, argued for appellant. Jason Manoogian, deputy county counsel, argued for respondent R.M.. Nicole A. Williams, court appointed counsel, argued for respondent N.M.. Cause submitted.

Cause called. Patrick Whalen argued for appellant. Todd M. Ratshin argued and Paul Starkey appeared only for respondent. Cause submitted.

The judgment is affirmed.  
CANTIL-SAKAUYE, J.  
I concur: Scotland, P.J.  
I dissent: ...  
Davis, J.\*

The judgment is affirmed.  
BLEASE, J.  
We Concur: Scotland, P.J.  
Hull, J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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**Court Minutes**

**March 23, 2009, Continued**

- C056622      THE PEOPLE v.      (Not For Publication)**  
**BRIAN ISADORE JONES**  
The conviction on count twelve is hereby vacated. The judgment is affirmed in all other respects. The trial court is directed to prepare an amended abstract of judgment in light of this court's decision regarding the conviction on count twelve and to reflect the correct aggregate term, imposed at sentencing, of 122 years six months in state prison. The trial court is further directed to deliver a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.  
DAVIS, J.\*  
We Concur:    Sims, Acting P.J.  
                 Hull, J.
- C057136      THE PEOPLE v.      (Not For Publication)**  
**CHRISTOPHER CHILTON**  
The judgment is affirmed.  
MORRISON, J.\*  
We Concur:    Robie, Acting P.J.  
                 Cantil-Sakauye, J.
- C057170      THE PEOPLE v.      (Not For Publication)**  
**KENNETH DALE MURPHY**  
The judgment is affirmed.  
HULL, J.  
We Concur:    Sims, Acting P.J.  
                 Davis, J.\*
- C057457      THE PEOPLE v.      (Not For Publication)**  
**TIMOTHY R. WRIGHT**  
The judgment is affirmed.  
MORRISON, J.\*  
We Concur:    Nicholson, Acting P.J.  
                 Robie, J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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**Court Minutes**

**March 23, 2009, Continued**

**C057728      THE PEOPLE v.      (Not For Publication)**  
**CHARLES LOCKHEART**

The judgment is affirmed.  
BLEASE, Acting P.J.

We Concur: Nicholson, J.  
Raye, J.

**C057757      THE PEOPLE v.      (Not For Publication)**  
**SARAH ELIZABETH DUTRA**

The matter is remanded for the trial court to determine the restitution amount to award to Joyce Carter (Blair). The trial court is directed to reduce the restitution amount to Alfred Torres to \$6,900. The trial court is also directed to amend the abstract of judgment to reflect these changes, and to show total custody credit for defendant of 2,145 days, as detailed in part 3 of this opinion, and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

DAVIS, J.\*

We Concur: Scotland, P.J.  
Robie, J.

**C057653      THE PEOPLE v.      (Not For Publication)**  
**LYNN CLEGHORN**

Defendant's sentence is vacated and the matter is remanded for resentencing in accordance with the principles set forth in this opinion. In all other respects, the judgment is affirmed.

MORRISON, J.\*

I concur: Nicholson, Acting P.J.

I concur and write separately to express my concern on the trial judge's refusal to follow clear requirements of law.

Robie, J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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**Court Minutes**

**March 23, 2009, Continued**

- C058064      THE PEOPLE v.      (Not For Publication)**  
**RALPH HIBBLER, III**  
The judgment is affirmed.  
NICHOLSON, J.  
We Concur: Blease, Acting P.J.  
Davis, J.\*
- C058131      THE PEOPLE v.      (Not For Publication)**  
**JOHN WALLACE CARTER**  
The judgment is affirmed.  
MORRISON, J.\*  
We Concur: Nicholson, Acting P.J.  
Robie, J.
- C058246      THE PEOPLE v.      (Not For Publication)**  
**JERRY LEE STARK, III**  
The judgment is affirmed.  
MORRISON, J.\*  
I concur: Hull, J.  
I concur in the result:  
Raye, Acting P.J.
- C058599      THE PEOPLE v.      (Not For Publication)**  
**PAUL ALEJANDRO DURAN**  
The judgment is affirmed.  
ROBIE, J.  
I concur: Hull, J.  
I concur in the result. Whatever error, if any, occurred in the failure to give a  
pinpoint instruction on assault with a firearm was harmless. The defendant was  
not convicted of that offense.  
Blease, Acting P.J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District,  
assigned by the Chief Justice pursuant to article VI, section 6 of the California  
Constitution.

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**March 23, 2009, Continued**

- C058799      THE PEOPLE v.      (Not For Publication)**  
**DAVID McKINLEY WALTON**  
The appeal is dismissed without prejudice to any rights defendant may have by way of a petition for writ of habeas corpus.  
ROBIE, J.  
We Concur: Scotland, P.J.  
Butz, J.
- C058884      THE PEOPLE v.      (Not For Publication)**  
**TIMOTHY JAMES HURSH**  
The judgment is affirmed.  
MORRISON, J.\*  
We Concur: Nicholson, Acting P.J.  
Robie, J.
- C054927      HAUSELT v. COUNTY OF BUTTE      (Certified For Publication)**  
The judgment is affirmed. County is awarded costs of appeal.  
DAVIS, J.\*  
We Concur: Hull, Acting P.J.  
Cantil-Sakauye, J.
- C055890      FRANKEL v. FRANKEL      (Not For Publication)**  
The judgment is reversed as to the award of sanctions against Jeffrey under Family Code section 271. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal.  
(Cal. Rules of Court, rule 8.278 (a) . )  
NICHOLSON, Acting P.J.  
We Concur: Robie, J.  
Cantil-Sakauye, J.
- C055676      In re JEREMIAH F.; THE PEOPLE v.      (Not For Publication)**  
**JEREMIAH F.**  
The order of the juvenile court is affirmed.  
NICHOLSON, Acting P.J.  
We Concur: Robie, J.  
Davis, J.\*

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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**Court Minutes**

**March 23, 2009, Continued**

**C059355**      **In re R.S.; SACRAMENTO COUNTY**      **(Not For Publication)**  
**DEPARTMENT OF HEALTH AND HUMAN**  
**SERVICES v. S.F.**

The judgment is affirmed.

HULL, J.

We Concur:    Raye, Acting P.J.  
                 Butz, J.

**C057250**      **In re D.F.; SACRAMENTO COUNTY**      **(Not For Publication)**  
**C057753**      **DEPARTMENT OF HEALTH AND**  
**HUMAN SERVICES v. D.F., SR.**

THE COURT:

The opinion in the above entitled matter on February 20, 2009, was not published in the Official Reports. For good cause it now appears the opinion should be published and it is so ordered.

FOR THE COURT:

BLEASE, Acting P.J.

Cantil-Sakauye, J.

Morrison, J.\*

**March 24, 2009**

**C052822**      **THE PEOPLE v.**      **(Not For Publication)**  
**C055721**      **JEFFRICK BROWN**

The judgment is affirmed.

DAVIS, J.\*

We Concur:    Nicholson, Acting P.J.  
                 Hull, J.

**C053995**      **THE PEOPLE v.**      **(Certified For Publication)**  
**RANDY DEAN PIERCE**

The judgment is affirmed.

DAVIS, J.\*

I concur:        Robie, J.

I concur in the result: ...

Hull, Acting P.J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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**Court Minutes**

**March 24, 2009, Continued**

- C055619      THE PEOPLE v.      (Not For Publication)**  
**SENICA RAYSHAWN HILL et al.**  
Defendant Young's judgment is affirmed. ...  
As to defendant Hill, the unpronounced \$1,799 in victim restitution, the \$213.37 booking fee and the \$23.50 classification fee mistakenly entered in Hill's abstract of judgment are stricken. Defendant Hill is remanded to the trial court for a hearing on victim restitution and his ability to pay authorized fees. In all other respects defendant Hill's judgment is affirmed.  
DAVIS, J.\*  
We Concur: Scotland, P.J.  
Sims, J.
- C056419      THE PEOPLE v.      (Not For Publication)**  
**GARY WAYNE RUBLE**  
The judgment is affirmed.  
DAVIS, J.\*  
We Concur: Scotland, P.J.  
Blease, J.
- C056845      THE PEOPLE v.      (Not For Publication)**  
**ZACHARY TERRY HARRIS**  
The appeal is dismissed.  
DAVIS, J.\*  
We Concur: Hull, Acting P.J.  
Cantil-Sakauye, J.
- C057525      THE PEOPLE v.      (Not For Publication)**  
**DENNIS MICHAEL O'BRIEN**  
The judgment is affirmed.  
MORRISON, J.\*  
We Concur: Nicholson, Acting P.J.  
Robie, J.
- C058061      THE PEOPLE v.      (Certified For Publication)**  
**DANNY GREG UECKER**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Nicholson, Acting P.J.  
Raye, J.

\*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



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**Court Minutes**

**March 24, 2009, Continued**

- C058144      THE PEOPLE v.      (Not For Publication)**  
**ARON CRUZ ROJAS**  
The judgment is affirmed.  
HULL, J.  
I concur: Butz, J.  
With one exception, I concur in the majority opinion. ...  
Because the trial court had no duty to instruct sua sponte on imperfect self-defense and, in any event, defendant was not harmed by lack of such instruction, I concur that the judgment must be affirmed.  
Scotland, P.J.
- C058146      THE PEOPLE v.      (Not For Publication)**  
**ZOLTAN MICHAEL GERGELY**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We Concur: Sims, J.  
Nicholson, J.
- C058167      THE PEOPLE v. MARK ADCOCK      (Not For Publication)**  
The judgment is affirmed.  
HULL, J.  
We Concur: Scotland, P.J.  
Butz, J.
- C059049      THE PEOPLE v.      (Not For Publication)**  
**JOHNNY LEE KETCHUM**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We Concur: Blease, J.  
Robie, J.
- C059664      THE PEOPLE v.      (Not For Publication)**  
**RICKY ARMSTRONG PATTERSON**  
The judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the \$128 booking fee imposed by the court and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.  
SCOTLAND, P.J.  
We Concur: Blease, J.  
Robie, J.

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**Court Minutes**

**March 24, 2009, continued**

- C059706      THE PEOPLE v.      (Not For Publication)**  
**ANTHONY ANGELO ZAMORA**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Nicholson, Acting P.J.  
Hull, J.
- C057018      CALIFORNIA NATIVE PLANT      (Certified For Publication)**  
**SOCIETY v. CITY OF RANCHO**  
**CORDOVA et al.; JAEGER ROAD**  
**530, LLC**  
The judgment is reversed and the trial court is instructed to enter,  
consistent with this opinion, a new and different judgment granting in part and  
denying in part the Society's petition for writ of mandate. The parties shall bear  
their own costs on appeal.  
(Cal. Rules of Court, rule 8.278 (a) . )  
ROBIE, J.  
We Concur: Nicholson, Acting P.J.  
Hull, J.
- C057430      HELDER v. HELDER, JR. et al.      (Not For Publication)**  
The order is affirmed.  
MORRISON, J.\*  
We Concur: Robie, Acting P.J.  
Cantil-Sakauye, J.
- C057542      TAXPAYERS FOR IMPROVING      (Certified For Publication)**  
**PUBLIC SAFETY et al. v.**  
**SCHWARZENEGGER, as Governor, etc., et al.**  
The judgment is affirmed.  
HULL, J.  
We Concur: Scotland, P.J.  
Nicholson, J.

**March 25, 2009**

- C056765      THE PEOPLE v.      (Not For Publication)**  
**MICHAEL JOHN HUGGINS, JR.**  
The judgment is affirmed.  
HULL, J.  
We Concur: Scotland, P.J.  
Cantil-Sakauye, J.

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**Court Minutes**

**March 25, 2009, Continued**

- C059762      THE PEOPLE v.      (Not For Publication)**  
**HILBERTO RIVERO OSORIO**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We Concur:    Sims, J.  
                  Nicholson, J.
- C059556      THE PEOPLE v.      (Not For Publication)**  
**JOSEPH HAROLD WHITEMORE, JR.**  
The judgment is affirmed.  
BUTZ, J.  
We Concur:    Scotland, P.J.  
                  Raye, J.
- C057734      PLUMBERS AND STEAMFITTERS LOCAL      (Not For Publication)**  
**UNION NO. 447 et al. v. JOHN F. OTTO, INC.**  
The judgment of dismissal is affirmed. Otto is awarded costs on appeal.  
(Cal. Rules of Court, rule 8.278 (a) (2) .)  
BUTZ, J.  
We Concur:    Sims, Acting P.J.  
                  Hull, J.
- C058502      HOFMAN RANCH et al. v.      (Certified For Publication)**  
**YUBA COUNTY LOCAL AGENCY**  
**FORMATION COMMISSION et al.**  
The judgment is affirmed. Defendants are awarded their costs on appeal.  
(Cal. Rules of Court, rule 8.278 (a) (2) .)  
ROBIE, J.  
We Concur:    Scotland, P.J.  
                  Hull, J.

**March 26, 2009**

- C058501      THE PEOPLE v.      (Not For Publication)**  
**HARJIT S. BHAMBRA**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We Concur:    Raye, J.  
                  Butz, J.

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**Court Minutes**

**March 26, 2009, Continued**

- C058882      THE PEOPLE v.      (Not For Publication)**  
**DON HENRY WIDEMAN, JR.**  
The judgment is affirmed.  
CANTIL-SAKAUYE, J.  
We Concur: Raye, Acting P.J.  
Robie, J.
- C054210      In re LENNIE PARKER on Habeas Corpus      (Not For Publication)**  
The trial court's order vacating the Board of Parole Hearings' decision  
and directing the Board to reconsider the matter is affirmed.  
The trial court's order is reversed insofar as it directs the Board of Parole  
Hearings to grant parole to Parker.  
SIMS, Acting P.J.  
We Concur: Raye, J.  
Butz, J.

**March 27, 2009**

- C056219      THE PEOPLE v.      (Not For Publication)**  
**OCTAVIO GOMEZ-PEREZ et al.**  
The judgments are affirmed.  
BUTZ, J.  
We Concur: Scotland, P.J.  
Raye, J.
- C057488      THE PEOPLE v.      (Not For Publication)**  
**JUSTIN MICHAEL COOPER**  
The judgment is affirmed.  
RAYE, J.  
We Concur: Nicholson, Acting P.J.  
Butz, J.
- C058966      THE PEOPLE v.      (Not For Publication)**  
**BILLY TOM DUNCAN, JR.**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We Concur: Sims, J.  
Nicholson, J.

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**Court Minutes**

**March 27, 2009, Continued**

<b>C059013</b>	<b>THE PEOPLE v. WILLIAM FREDERICK RYMER</b> The judgment is affirmed. ROBIE, J. We Concur: Raye, Acting P.J. Cantil-Sakauye, J.	<b>(Not For Publication)</b>
<b>C057989</b>	<b>McCAIN et al. v. HAN</b> The judgment is affirmed. CANTIL-SAKAUYE, J. We Concur: Nicholson, Acting P.J. Butz, J.	<b>(Not For Publication)</b>